

Chapter 9

Environmental Processes

9.1 General Discussion

- Since this manual outlines both the federal and state procedures that a local agency must follow for a Federal Highway Administration (FHWA) funded project, compliance with the National Environmental Policy Act (NEPA) and Montana Environmental Policy Act (MEPA) will be described. If a local agency needs assistance in determining the environmental classification of a project, they are encouraged to contact the Montana Department of Transportation - Environmental Services Bureau to arrange for a field review of the proposed project.

When the project involves federal funds or federal permits, its environmental requirements are governed by:

- NEPA of 1969, 42-USC-4321 et seq.
- Council on Environmental Quality Regulations for Implementing NEPA, 40 CFR, Parts 1500, et seq.
- Federal Highway Administration — Federal Transit Administration, 23 CFR, Part 771.
- Environmental Impact and Related Procedures, 49 CFR, Part 622.
- Any other Federal, State and local environmental laws, regulations, rules, or executive orders that may be applicable to the project. Contact the Environmental Services Bureau for guidance.

A local agency should be aware of the following Montana Environmental Policy Act (MEPA) requirements:

- MEPA – Title 75 Chapter 1 MCA
- All projects that require a MDT action must comply with MEPA. The local government environmental documentation must also comply with MEPA.
- While environmental documentation that meets NEPA requirements usually satisfies MEPA requirements, MEPA documents do not necessarily satisfy NEPA requirements. Local governments need to be aware to the differences.

When a project involves an MDT action the local agency also must meet the requirements of ARM 18.2.235 through 18.2.260. The definition of an MDT action is: A project, program, or activity directly undertaken by an agency; a project or activity supported through contract, grant subsidy, loan, or other form of funding assistance from the agency, either singly or in combination with one or more other state agencies; or a project or activity involving the issuance of a lease, permit, license, certificate, or other entitlement for use or permission to act by the agency, either singly or in combination with other state agencies.

Environmental evaluation starts with project classification which is normally the initial step in project development. A project will fall into one of three defined classes, depending on the extent of its impacts. The three classes are defined in Section 9.2.

Federal and State regulations require the use of an interdisciplinary approach to assess a project's social, economic, and environmental impacts. "Interdisciplinary" means integrated consideration of the project's aspects through such disciplines as biology, economics, geology, sociology, urban planning, archeology, communications, and noise in addition to traditional civil engineering expertise. Interdisciplinary requirements for each class of project are discussed in Sections 9.3, 4, and .5. The MDT Environmental Services Bureau can advise local agencies on how to set up an interdisciplinary approach.

For projects that may involve historic and/or archaeological lands, the local agency should contact the MDT Environmental Services Bureau. MDT will contact the State Historic Preservation Office.

It is permissible to complete activities, such as budgeting, proposal development, legislative or feasibility studies, and value engineering studies prior to the environmental evaluation. At the discretion of the local agency, other activities, such as preliminary engineering for soil surveys and location studies, may be done in conjunction with or prior to the environmental evaluation.

All environmental documentation will be written in a standard format. Contact the MDT Environmental Services Bureau to receive the most up to date information on format.

9.2 Project Classification

All projects will be classified by the local agency, in coordination with MDT, as defined below. The classification should take place as early as possible in the project's development since the scope of the subsequent environmental evaluation and documentation processes depends on the project's class. Upon this determination, the local agency completes the environmental classification section of the project proposal. The following paragraphs define the three classes of projects and list types of work typically found in each class.

NEPA/MEPA — Environmental Impact Statement (EIS)

Actions that significantly affect the environment require an EIS (40 CFR 1508.27 and ARM 18.2.238) by virtue of their effects upon land use, planned growth, development patterns, traffic volumes, travel patterns, transportation services, natural resources, or by virtue of the fact that they are apt to create public controversy are EIS projects. An EIS can be prepared without developing an Environmental Assessment (EA). Refer to Sections 9.3 and 9.7. Projects which usually require an EIS are:

- a. A new controlled-access freeway.
- b. A highway project of four or more lanes on a new location.
- c. New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated-guideway transit).
- d. New construction or extension of a separate roadway for buses or high-occupancy vehicles not located within an existing highway facility.

The local agency checks the "preliminary" box and completes the Local Agency "Environmental Classification Summary" (ECS) (*will need to develop this form, I do have a copy of the one from the State of Washington*) form utilizing known project information, as developed in the planning stage on all projects. The ECS is submitted by the local agency with the Project Proposal and the Local Agency Agreement to the MDT Environmental Services Bureau Chief for submittal to FHWA for preliminary concurrence. The local agency distributes copies to resource agencies for

information and coordination purposes. Resource agencies can include public agencies with jurisdiction, special knowledge, or land ownership

EIS projects under the Clean Water Act Section 404 involve projects that impact Waters of the United States and may require a nationwide or an individual permit from the U.S. Army Corps of Engineers (COE). Local agencies will perform the required environmental scoping as a priority after project funding is obligated. After scoping is completed, the local agency checks the “final” box and completes the ECS for submittal to the MDT Environmental Services Bureau Chief for FHWA’s final concurrence. The local agency distributes copies to resource agencies for information and coordination purposes.

After scoping is completed for EIS projects, the local agency checks the “final” box and completes the ECS for submittal to the MDT Environmental Services Bureau Chief for FHWA’s final concurrence. The ECS should be submitted as early as possible and/or practical in the project development stage. The local agency distributes copies to resource agencies for information and coordination purposes.

NEPA/MEPA — Categorical Exclusion (Cat Ex)

Unless specifically requested by other agencies or the public, these actions do not require an EIS or an EA.

Cat Ex’s are actions which meet the definition contained in 40 CFR 1508.4 and, based on past experience with similar actions; do not involve significant environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic, or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

Any action which normally would be classified as a Cat Ex but could involve unusual circumstances will require the applicant to, in cooperation with the FHWA and MDT, to conduct appropriate environmental studies to determine if the Cat Ex classification is proper. Such unusual circumstances include:

- Environmental impacts;
- Inducing significant impact to planned growth or land use for the area
- Require the relocation of significant numbers of people
- Have a significant impact on any natural, cultural, recreations, historic to other resource
- Involve significant air, noise, or water quality impacts, have significant impacts on travel patterns, or other wise either individually or cumulatively have any significant environmental impacts
- Substantial controversy on social, economic, or environmental grounds;
- Inconsistencies with any federal, state, or local law, requirement, or administrative determination relating to the environmental aspects of the action.

Cat Ex projects required documentation (Documented Cat Ex)

Projects in this category require the local agency to complete the ECS for submittal to the MDT Environmental Services Bureau for FHWA’s concurrence prior to beginning the Survey phase.

Projects may require detailed environmental studies for Cat Ex documentation to determine the environmental, economic, and social impacts. After obligation of PE funds, the detailed analyses can take place and the local agency finalizes the ECS for final approval.

Examples of these situations are as follows:

1. The acquisition of more than minor amounts of temporary or permanent strips of right-of-way for construction of such items as clear vision corners and grading. Such acquisitions will not require any commercial or residential displacements.
2. The use of properties protected by Section 4(f) of the Department of Transportation Act (49 USC 303).
3. A determination of adverse effects by the State Historic Preservation Office.
4. Any U.S. Army Corps of Engineers Section 404 permits.
5. Any work in wetlands.
6. Any work encroaching on a regulatory flood-way or any work affecting the flood-plain (100-year flood) elevations of a water course or lake.
7. Any impacts to federally listed Threatened and Endangered Species.
8. Any changes in access control.
9. The use of a temporary road, detour, or ramp closure unless the use of such facilities satisfy the following conditions:
 - Provisions are made for access by local traffic and so posted.
 - Through-traffic dependent business will not be adversely affected.
 - The detour or ramp closure, to the extent possible, will not interfere with any local special event or festival.
 - The temporary road, detour, or ramp closure does not substantially change the environmental consequences of the action.
 - There is no substantial controversy associated with the use of temporary road, detour, or ramp closure.
11. Any known hazardous materials sites or previous land uses with potential for hazardous materials sites or previous land uses with potential for hazardous materials remains within the right-of-way.
12. Any projects that involve unusual circumstances not listed or public opposition. The local agency should contact the MDT Environmental Services Bureau for additional guidance.

NEPA — Environmental Assessment (EA)

For actions in which the significance of the impact on the environment is not clearly established, an EA is prepared to determine the extent of environmental impact and to determine whether an EIS is needed. No EIS is required when the EA supports a NEPA Finding of No Significant Impact (FONSI). Refer to Section 9.5 and 9.8.

The local agency checks the “preliminary” box and completes the Local Agency “Environmental Classification Summary” (ECS) form utilizing known project information, as developed in the planning stage on all EA projects. The ECS is submitted by the local agency with the Project Proposal and the Local Agency Agreement to the MDT Environmental Services Bureau Chief for submittal to FHWA for preliminary concurrence. The local agency distributes copies to resource agencies for information and coordination purposes.

EA projects under the Clean Water Act Section 404 involve projects that impact Waters of the United States and may require an individual permit from the U.S. Army Corps of Engineers (COE). Local agencies will perform the required environmental scoping as a priority after project

funding is obligated. After scoping is completed, the local agency checks the “final” box and completes the ECS for submittal to the MDT Environmental Services Bureau Chief for FHWA’s final concurrence. The local agency distributes copies to resource agencies for information and coordination purposes.

9.3 Procedures for EIS Projects

The procedures for an EIS project will be developed when necessary.

9.4 Procedures for Cat Ex Projects

The activities described in this section are defined as a documented Categorical Exclusion.

Appointment of Disciplines and Project Manager

After authorization of preliminary engineering funds, the local agency appoints experts in various disciplines to conduct all studies necessary for the Cat Ex preparation and appoints a Project manager (PM) to be responsible for development of the project. These projects do require the use an interdisciplinary approach for the needed investigations.

Coordination

The local agency coordinates with affected federal, state, and local agencies, Indian tribes, interest groups, and the public in determining the issues to be addressed. The PM is responsible for the coordination. During the early coordination process, FHWA, in cooperation with the MDT Environmental Services Bureau and the local agency, requests that other involved agencies become cooperating agencies. By law, federal agencies having jurisdiction or special expertise must become cooperating agencies when requested. FHWA normally initiates contact with other federal agencies. FHWA may direct the local agency to contact state or other local agencies. The local agency makes these requests in writing and sends a copy to the MDT Environmental Services Bureau.

Data Collection, Inventory, and Evaluation

The various discipline representatives conduct studies to assess the project’s social, economic, and environmental impacts. The depth of a study varies with the magnitude of the project. Generally, discipline studies for a Cat Ex are developed using standard methods developed by the Environmental Services Bureau. Contact the Environmental Services Bureau for information methods and format. Once the preliminary analysis is made on the type and magnitude of the impact, the level and type of the studies can be determined. Studies are carried out to the point where the extent of environmental impact can be determined. If the level of impacts approaches significant or is determined to be significant the level of environmental documentation would raise to an EA, EIS, or at the local agencies discretion the project may be terminated as a “no build.”

Public Involvement

Refer to the MDT Public Involvement Handbook.

Submittal of Reports and ECS

The local agency completed an ECS form and prepares discipline reports, as appropriate. These may include but are not limited to, an Air Quality Analysis, Wetlands Findings Report, a Biological Resources Report, Cultural Resources Report, and Section 4(f) evaluation. The Environmental Services Bureau can assist in providing the format and procedure for completing

these reports. Environmental Services Bureau will review the reports and ECS and determine the completeness, support of the Cat Ex determination, and obtain FHWA approval.

9.5 Procedures for EA Projects

The procedures for an EA project will be developed when necessary.

9.6 Project Reevaluation

Whenever single or cumulative conditions have occurred that might cause new or more severe environmental impacts, the local agency shall reevaluate an environmental document. A written reevaluation is required when any of the following conditions exist: 1. The project has not moved into the construction phase within three years of the FHWA approval of the environmental documentation. 2. Changes to environmental laws, rules, or regulations that affect the project has occurred. 3. The project scope has changed. The local agency reevaluates the project by conducting appropriate environmental studies. The reevaluation is submitted in written form to the MDT Environmental Services Bureau Chief. If the reevaluation identifies changes in the proposed project, the affected environment, the anticipated impacts, or the proposed mitigation measures, which result in additional impacts that were not evaluated in the original environmental documentation, a new or supplemental document is prepared and circulated. Other types of changes including those which substantially reduce the project's impacts, do not require the preparation of a supplement. For additional guidance on project reevaluations contact the Environmental Services Bureau.

9.7 Section 4(f) Evaluation (49 U.S.C. 303 and 23 CFR 771.135)

Section 4(f) is only required for projects that receive FHWA funding, there is no similar state requirement. Section 4(f) of the Department of Transportation Act states that the FHWA will not approve the use of land from a significant publicly owned, park recreations area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that:

- There is no feasible and prudent alternative to the use of land from the property; and
- The proposed action includes all possible planning to minimize harm to the property resulting from such use.

In Section 4(f) there are three types of determination that may be made:

- De Minimis – This may be used when the above referenced requirements are met and the impact is de minimis (very small). For further guidance on the use of de minimis contact the MDT Environmental Services Bureau.
- Programmatic 4(f) evaluations – In certain circumstances a programmatic section 4(f) evaluation may be used. There are four approved Nationwide Programmatic Section 4(f) evaluations. These evaluations are found at the FHWA Environmental Guidebook and the Project Development Website <http://www.environment.fhwa.dot.gov/guidebook/index.asp>
- Individual Section 4(f) evaluation – This evaluation and documentation is used when de minimis and programmatic 4(f) evaluations cannot be used due to the size or magnitude of impact. These are stand alone documents that have public involvement and public comment requirements. For further information contact MDT Environmental Services Bureau.

9.8 Project Reviews**References**

- a. NEPA Section 1505.2 and 1505.3.
- b. 23 CFR 771.109(b).
- c. MEPA 75-1-201 and 75-1-208 MCA
- d. ARM 18.2.235 through 18.2.261

Definition

Project reviews are procedures for monitoring project development to ensure that environmental commitments are kept and adverse impacts mitigated. Reviews are conducted periodically by responsible local agency or monitoring agency officials throughout the various stages of project development and subsequent maintenance.

Procedures

- a. The local agency ensures that decisions recorded in environmental documents are accomplished in design and construction of projects and maintained or improved upon during the life of the project.
- b. The local agency continues to maintain the project environmental commitment file which follows the project through survey, design, right-of-way acquisition, construction, and maintenance.
- c. During construction, the local agency implements and monitors the adopted impact mitigation measures to ensure that they are satisfactorily maintained or improved upon.
- d. When unique or unusual mitigation is required, the local agency conducts periodic reviews during construction or maintenance to evaluate the effectiveness of mitigation measures that were incorporated into the construction contract.
- e. The local agency must request concurrence from the Chief Engineer for any significant alterations to mitigation measures agreed to during the environmental process, even when changes are made during construction or maintenance.
- f. The local agency makes available progress reports and any results of the impact mitigation measures at the request of the public or agencies.

Commitment Summary

As an initial part of project development, the local agency establishes a project commitment file. Establishment of this file generally coincides with preparation of the environmental document or could be at later stages as required. The file consists of proposed mitigating measures, commitments made to resource or other agencies with permitting authority, and other commitments made on the project. The file normally consists of design and environmental commitments. Other commitments may be added at the local agency's discretion, such as right-of-way, access, maintenance, permits, and agreements. The local agency continues to maintain the commitment file as a project progresses through its development process. Whenever commitments are made, they are incorporated into project documents and transferred from one phase of the project to the next. Commitments are normally included or identified in the following documents or actions:

- a. Environmental Impact Statement (Record of Decision), Environmental Assessment (Finding of No Significant Impact), or Categorical Exclusion.
- b. Design reports.
- c. Right-of-way negotiations.
- d. Access plans.
- e. Findings and order.

- f. Contract plans.
- g. Preconstruction conference.
- h. Change orders.
- i. End of project report.

Maintenance - To organize and track commitments made during the development and implementation of a project. When a commitment is made, record it, what the commitment is and why it was made. This must be included in the project file.

Commitments which require ongoing maintenance need to be retained in the files as long as the commitment is active.